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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,765	02/09/2004	Robert Lee Wells	8049C	9757

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,765

Applicant(s)

WELLS ET AL.

Examiner

Lakshmi S Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2-9-04
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claims 1-16 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 11, 12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0312343 (hereafter EP '343, submitted on PTO-1449).

EP '343 discloses hair treatment composition comprising a cationic surfactant, a fatty alcohol, a basic dye, neutral dye and water (abstract, page 2 page 4 and lines 18-24). The amounts of surfactant, dyes, water and fatty alcohol disclosed by EP '343 (page 2, lines 43-50) reads on the instant claims. Examiner notes that the instant hair preparation involves the steps of mixing water, fatty alcohol, and surfactant, heating the mixture to 73 degrees C and then adding the dyes (pages 19-20 of the instant specification). While EP '343 does not explicitly mention that the dye forms a coacervate in a dispersed phase of liquid emulsion droplets within a continuous aqueous medium as claimed, the reference discloses that the basic and neutral dyes, together with cationic surfactant, form a disperse lamellar liquid crystal phase (page2, lines 35-38), as required by instant claim 5. With respect claim 12, instant specification of page 9 states fatty alcohols as "other" non-cationic conditioning agents. Fatty alcohols disclosed by EP '343 read on non-cationic conditioning agents. EP also disclose a method of preparing the hair product which involves the exactly the same steps as that of the instant invention described on

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page 15, example II (instant disclosure) i.e., mixing cationic surfactant in water medium and fatty alcohol, heating between 60 and 80 degrees C, cooling the solution and adding the dyes (page 4, lines 29-43). Further, EP '343 discloses that the surfactant forms a dispersed lamellar liquid crystal phase in the solution. The amounts or percentages of dyes and cationic surfactants discloses by EP '343 is in the same range as that claimed. Thus, given the same components and same method of preparing the composition, it is inherent that the dyes added in the teachings of EP '343 forms coacervate droplets of the claimed size in the dispersed phase comprising the surfactants and that the fatty alcohol forms a gel network. Furthermore, EP '343 discloses the same steps in applying the hair conditioner composition as claimed in the instant (page 4, lines 44-49) and accordingly, the color intensity imparted by dye materials is inherent to the composition of EP '343. Therefore, EP '343 anticipates the instant claims.

Claim Rejections - 35 USC § 103

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 312343 in view of Benton et al (J. Am. Oil Chem. Soc. 1987).

EP '343 teaches fatty alcohols of the instant claim but does not mention the claimed fatty alcohol gel network.

Benton et al studied the behavior of dilute aqueous systems containing mixtures of cationic surfactant and C16-C18 fatty alcohols. Benton teaches the particles of a surfactant-rich phase in a surfactant-water-alcohol system forms a network structure which imparts viscoelastic

properties even to quite dilute formulations and the network possess particles of 0.1 to 1 micron diameter (col. 1, page 424). Benton observed that both alcohol rich particles with lamellar structure and crystalline fibers containing surfactants were formed and that the ratio of fatty alcohols to surfactant determines the formation of separate fibrous and particulate forms. Benton further teaches that the continuous networks formed contribute to the viscoelasticity properties of the formulation (page 425, col. 2, 3rd paragraph and page 428, discussion on pages 432-433).

Although Benton et al does not specifically teach hair-conditioning compositions, they suggest that fatty alcohol-surfactant combinations are used in several cosmetic and personal care products (col. 1, page 424). Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention that a combination of fatty alcohol, surfactant and water, in the composition of EP '343, exhibits gel network because Benton suggests a mixture of fatty alcohol and cationic surfactant in water, depending on the ratio of the alcohol to surfactant forms fibers or lamellar network structures containing particles ranging from 0.1 to 1 micron and imparts viscoelastic properties to the composition.

7. Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 312343 in view of US 4824602 to Juneja.

EP '343 differs from the instant claims in that they fail to teach the non-cationic conditioning agents, in particular silicones of the instant claims. However, EP '343 suggests addition of other hair conditioners.

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Juneja teaches a process for purifying quaternary cationic surfactants materials and hair cosmetic compositions containing purified quaternary cationic surfactant materials to impart improved viscosity properties and stability to hair care preparations (col. 1, col. 2, lines 28-32). Juneja also teaches the compositions as hair conditioners, hair rinses, shampoos etc and suggests the addition of silicone as conditioning agents (col. 3, lines 45 through col. 4, lines 13 and col. 9, lines 12-60) and fatty alcohols as lipid vehicle materials (col. 8, lines 48- through col. 9, lines 10) in the compositions. Further, Juneja teaches incorporation of dyes, colorants and other components in the hair care compositions. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to add silicones of Juneja to the hair conditioning compositions of EP '343, containing cationic quaternary surfactants and fatty alcohols, because Juneja teaches that silicones impart conditioning benefit to the hair and also act as anti-resoiling agent by reducing the deposition of lipid materials and the cationic surfactants on to the hair (col. 3, lines 47-50 and col. 9, lines 12-20). Therefore, one of an ordinary skill in the art would have expected to improve the conditioning benefits of the hair conditioning composition of EP '343 by incorporating silicones and also reduce the resoiling of the hair by preventing the deposition of fatty alcohols and cationic surfactants taught by EP '343.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
August 2, 2004